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|-------------------------------|------------------------|----------------------|--|
| <b>Notice of Allowability</b> | <b>Application No.</b> | <b>Applicant(s)</b>  |  |
|                               | 10/524,228             | JOHNSTONE, ALAN JOHN |  |
|                               | <b>Examiner</b>        | <b>Art Unit</b>      |  |
|                               | NAVIN NATNITHITHADHA   | 3735                 |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Interview Summary of 10 June 2010.
2. ☒ The allowed claim(s) is/are 1-3,5-9 and 11.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br/>Paper No./Mail Date _____</li> <li>4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br/>of Biological Material</li> </ol> | <ol style="list-style-type: none"> <li>5. <input type="checkbox"/> Notice of Informal Patent Application</li> <li>6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br/>Paper No./Mail Date <u>20100610</u> .</li> <li>7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment</li> <li>8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>9. <input type="checkbox"/> Other _____.</li> </ol> |
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### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Gregory R. Grace on 10 June 2010.

The application has been amended as follows:

Claims 1 and 8 have been amended as follows:

1. (currently amended) A method of diagnosing a pathological condition of a patient's body tissue, the method comprising determining the presence or severity of ischemia in the tissue by the steps of:

inserting a pH sensor into the tissue; [],[ ]

directly measuring intracompartamental pH in the tissue with the pH sensor and generating an electrical signal representative of the intracompartamental pH; and

~~converting, using a display, said electrical signal into a human-readable indication of the intracompartamental pH values, and displaying, using said display, the intracompartamental pH values;~~

~~determining a person using the intracompartamental pH measurement to determine the presence or severity of ischemia and to diagnose~~ diagnosing the pathological condition using the intracompartamental pH values;

wherein the pH sensor consists of a single probe mounted on a catheter.

8. (currently amended) A method as claimed in claim 1, wherein ~~the reading from the sensor is compared~~ determining comprises:

determining the presence or severity of ischemia by comparing the intracompartmental pH values with a calibrated scale to determine the extent of tissue damage.

Cancelled claims 13-23 have been inserted after claim 12 as follows:

- 13. (cancelled)
- 14. (cancelled)
- 15. (cancelled)
- 16. (cancelled)
- 17. (cancelled)
- 18. (cancelled)
- 19. (cancelled)
- 20. (cancelled)
- 21. (cancelled)
- 22. (cancelled)
- 23. (cancelled)

### **REASONS FOR ALLOWANCE**

2. The objections to claims 13-23 are WITHDRAWN in view of the Examiner's Amendment attached hereto.

3. In an Interview, on 10 June 2010, Examiner and Applicant's Representative, Gregory R. Grace, agreed on amending claim 1 by the Examiner's Amendment attached hereto to overcome the rejection of claims 1-3, 5-9, and 11 under 35 U.S.C. 101 and to place the Application in condition for allowance. See Interview Summary, mailed with the present Office Action.

4. Claims 1-3, 5-9, and 11 are allowed.

5. The following is an examiner's statement of reasons for allowance:

As stated in the prior Office Action, mailed 11 January 2010:

Applicant's arguments, see Remarks, pp. 11-16, filed 06 October 2009, with respect to the rejection of claims 1-3, 5-9, and 11 under 35 U.S.C. 103(a) as being unpatentable over Fiddian-Greene et al, U.S. Patent No. 6,238,339 B1 ("Fiddian-Greene"), in view of Sacristan et al, U.S. Patent No. 5,158,083 A ("Sacristan"), have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAVIN NATNITHITHADHA whose telephone number is

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(571)272-4732. The examiner can normally be reached on Monday-Friday, 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Marmor, II/  
Supervisory Patent Examiner  
Art Unit 3735

/N. N./  
Patent Examiner, Art Unit 3735  
06/11/2010